

190119

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NATASHA NUNN-PAIGE and
DEMETRIUS PAIGE,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,
JAMES WORTMAN, M.D., ALAN
PEACEMAN, M.D., JUAN APARICIO,
M.D., OLUWATENIOLA BROWN, M.D.,
NORTHWESTERN MEMORIAL
HOSPITAL, NORTHWESTERN
MEMORIAL FACULTY FOUNDATION,
RIVERFOREST ADVANCED IMAGING
CENTER d/b/a VHS ACQUISITION
SUBSIDIARY NUMBER 4, INC., WEST
SUBURBAN HOSPITAL MEDICAL
CENTER d/b/a RESURRECTION
UNIVERSITY, and THOMAS FINGLER,
M.D.,

Defendants.

No. 19-CV-02352

Judge Kendall

Formerly Case No. 2018 L 11716
Circuit Court of Cook County

DEFENDANT JAMES WORTMAN, M.D.'S RULE 12(b)(6) MOTION TO DISMISS

Defendant JAMES WORTMAN, M.D., by and through his attorneys, Sherri M. Arrigo, Katie B. Trucco and DONOHUE BROWN MATHEWSON & SMYTH LLC, and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Section 5/2-622 of the Illinois Code of Civil Procedure, moves this Honorable Court for dismissal of Plaintiffs' Complaint with prejudice. In support thereof, Defendant states as follows:

INTRODUCTION

This is a medical malpractice action originally filed in the Circuit Court of Cook County, naming Dr. Wortman as the only defendant, and the remaining parties as "respondents-in-discovery." (See Exhibit A, Plaintiff's Complaint.) Plaintiffs did not attach a statutorily-required

reviewing health professional's report to the complaint, attesting to a meritorious basis for the claims asserted against Dr. Wortman. *See* 735 ILCS 5/2-622. Plaintiffs allege on June 9, 2016 and October 24, 2016, Dr. Wortman failed to properly interpret Plaintiff Natasha Nunn-Paige's fetal ultrasounds, failed to report a placental accrete, and/or failed to report a placental previa. (Exhibit A at Count I.) Plaintiff Demetrius Paige also alleges loss of consortium against Dr. Wortman. (*Id.* at Count II.)

On March 4, 2019, Plaintiff filed a Motion for Default against Dr. Tong, who was originally named as a respondent-in-discovery in the state court action. (See Exhibit B, Motion for Default.) Subsequently, counsel for the United States of America filed a Notice of Removal on behalf of Dr. Tong, a deemed employee of the Public Health Service. (See Exhibit C, Notice of Removal.) The case was removed from the Law Division of the Circuit Court of Cook County to the Northern District of Illinois on April 10, 2019. (See Exhibit D, April 10, 2019 Order.)

Plaintiffs' Complaint must be dismissed for failure to submit the statutorily-required report authored by a qualified reviewing physician to support the medical negligence claim, as required by 735 ILCS 5/2-622. Even under the liberal notice pleading standard in federal court, Plaintiffs must comply with Section 2-622, which requires a report filed with the complaint, authored by a qualified physician setting forth the specific deficiencies in medical care, and the reviewing professional's opinion as to how the standard of care was allegedly violated. Plaintiffs have failed to submit a Section 2-622 report, and therefore the Complaint should be dismissed with prejudice.

LAW AND ARGUMENT

Section 2-622 of the Illinois Code of Civil Procedure is a substantive requirement that applies to medical malpractice claims brought in federal courts. 735 ILCS 5/2-622; *see also Ortiz*

v. United States, 2014 U.S. Dist. LEXIS 20270, at *3 (N.D. Ill. Feb. 19, 2014); *Williams v. Erickson*, 21 F. Supp. 3d 957, 959 (N.D. Ill. 2013). Section 2-622 provides that a medical malpractice complaint must be accompanied by a certificate stating that a qualified, licensed physician has reviewed the case and determined by a written report that the lawsuit is reasonable and meritorious. 735 ILCS 5/2-622(a)(1); *see also Sherrod v. Lingle*, 223 F.3d 605, 613 (7th Cir. 2000). The written report must be attached to the complaint and clearly identify “the reasons for the reviewing health professional’s determination that a reasonable and meritorious cause for the filing of the action exists.” 735 ILCS 5/2-622(a)(1). Failure to abide by Section 2-622 requires mandatory dismissal. *Sherrod*, 223 F.3d at 613; *Ortiz*, 2014 U.S. Dist. LEXIS 20270, at *4.

This Court should dismiss Plaintiffs’ complaint because the complaint fails to comply with the strict statutory requirements set forth in Section 2-622. 735 ILCS 5/2-622. There is no basis for a meritorious medical malpractice cause of action against Dr. Wortman without the required reviewing health professional’s report. *Id.* Thus, Plaintiffs have failed to state a claim against Dr. Wortman. Since initiating this cause of action on October 29, 2018, Plaintiffs have not complied with Section 2-622 either in state or federal court, and therefore have no basis to pursue a claim against Dr. Wortman. Dismissal of a complaint not filed with a Section 2-622 reviewing health professional’s report is mandatory, therefore, this Court should dismiss Plaintiffs’ complaint with prejudice.

CONCLUSION

WHEREFORE, for the foregoing reasons, defendant JAMES WORTMAN, M.D., respectfully requests that this Honorable Court enter an order dismissing with prejudice Plaintiffs’ Complaint at Law for failure to comply with Section 2-622 of the Illinois Code of Civil Procedure.

Respectfully submitted,

DONOHUE BROWN MATHEWSON & SMYTH LLC

By: /s/ Katie B. Trucco
Katie B. Trucco

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NOTICE OF FILING AND CERTIFICATE OF SERVICE

- ☒ I hereby certify that on May 10, 2019, I electronically filed the foregoing with the Clerk of the United States District Court for the Northern District of Illinois by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.
- ☐ I hereby certify that on May 10, 2019, I electronically filed the foregoing with the Clerk of the United States District Court for the Northern District of Illinois by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

/s/Katie B. Trucco

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